IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.387 OF 2004

Nicholas Piramal India Ltd. .. Appellant

Versus

Nicholas Employees Union & Ors. .. Respondents

Mr.Cama with Bharat Goyal i/b. Haresh Mehta for appellant

Mr.Arshad Shaik for respondents.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 5TH NOVEMBER 2004.

P.C.

. Heard Advocates.

. By consent of the parties following order is passed:

1. The impugned order of the learned Single Judge dated 17.8.2004 in Writ Petition No.5913 of 2004 and of the Industrial Court dated 7.5.2004 in Complaint (ULP) No.486 of 2003 is hereby quashed and set aside.

2. Pending the hearing and final disposal of the complaint (ULP) No.486 of 2003 parties agree and undertake as under:-

(a) The 10 Medical Representatives (MRs) listed in Annexure A-2 of the appeal, who had initially reported on transfer and then returned back to their original Head Quarters after the order of the Learned Single Judge dated 17.8.2004 shall proceed on transfer to the locations mentioned against their respective names in Annexure A-2. They shall report at their transferred location and commence normal field work on or before 24.11.2004.

(b) As regards the MRs at item No.2,

i.e. Mr.B.N.Choudhari, Item No.8 i.e. Mr.Sanjeev Mishra, and item No.10 i.e. Mr.Saumitra Datta, of Annexure "A-2" the appellant shall bring them to any Head Quarters within the State from which they were transferred, as soon as any vacancy of an MR comes into existence in such State.

(c) As regards the 7 employees who have not gone on transfer at all and whose names are given in Annexure B-2 they shall proceed on transfer and report to the Head Quarters mentioned against their names on or before 24.11.2004.

(d) As far as Mr.R.K.Khurana is concerned the appellant company has decided to transfer him to Faridabad within the State of Haryana and he shall report at Faridabad within three weeks from the date hereof.

(e) As regards the other MRs in the list Exh.B-2 who are not transferred

within the State where they were earlier working, the appellant company shall, as soon as a vacancy in the State from which they were transferred arises, give them a one-time option to elect whether they would prefer to be transferred to the new vacancy or remain where they are at that date. If such MR elects to accept the above offer, he shall report to his new Headquarters within two weeks from the date of receipt of intimation. If such MR does not desire to take the aforesaid option he shall intimate his decision to remain where he is, within two weeks from the receipt of intimation. If no intimation is received by Management either way within the aforesaid two weeks it will be presumed that he has no desire to shift and he shall thereafter remain where he is. It is made clear that this offer to be transferred to a new location within the original state aforesaid shall be a single offer and if the same is refused and/or not accepted within the time mentioned above, Management shall be

under no obligation to make a similar offer when any other vacancy arises in the same State in future.

3. It is hereby agreed and understood that the appellant company has decided to adjust and/or alter the above transfers as a one time and interim measure only and without prejudice to its contention that it has an unfettered right to transfer its MRs. The respondents accept these transfers without prejudice to their rights and contentions in the pending Complaint (ULP) No.486 of 2003.

4. It is made expressly clear that the entire arrangement contained in these minutes is only pending disposal of the main complaint in the Industrial Court.

5. As a gesture of goodwill, the appellant agrees and undertakes to pay wages for the period from 17.8.2004 to 31.10.2004 to all the respondent MRs. if they report and commence his normal field work at their transferred Headquarters as set out above. The reporting and

commencement of normal fieldwork will be on or before 24.11.2004.

6. The appellant company shall provide promotional materials to the respondent MRs on the day they respectively commence work at the Headquarters set out against their respective names in Annexures A-2 and B-2. The appellant company shall also furnish to the respondent MRs. necessary Doctors' Visit List (DVL). The MRs shall carry out necessary additions/ deletions to this list in consultation with their respective superiors as per the existing practice. The Territory Coverage Plan (TCP) shall be supplied/altered as per the existing practice.

7. The appellant company is directed to pay wages of October and November 2003 as per the order of the Industrial Court within two weeks from today. The appellant has already applied to the Industrial Court for a clarification as to the method of adjustment of these payments. The Industrial Court is directed to decide this application within four weeks from the date hereof.

8. Appellant company is directed to pay salary of Mr.Shankaran for the period July 2003 and from 19th July 2004 to 20th August 2004 and the salary of Mr.Sodhi for the period from 4th August 2004 to 23rd August 2004, if not already paid.

9. The Industrial Court is directed to dispose of the Complaint (ULP) No.486 of 2003 expeditiously.

10. Appeal disposed of accordingly. No order as to costs.

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